



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/148366

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Katherine May, HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 29, 2011, Milwaukee Enrollment Services (the agency) sent Petitioner a Notification of FoodShare Overissuance, Claim number # [REDACTED], indicating that Petitioner was over-issued FoodShare benefits in the amount of \$1178.00 for the period of June 1, 2011 to December 31, 2011. (Exhibit 8)

3. Petitioner filed an appeal of that overpayment, which was received by the Division of Hearings and Appeals on February 1, 2012. On April 4, 2012, ALJ Fleming issued a decision finding that the agency correctly determined that Petitioner was overpaid FoodShare benefits, because she failed to report that her then 20-year-old daughter had moved back into her home. (Exhibit 11)
4. The agency sent Petitioner dunning notices, reminding her about the FoodShare over-issuance on February 2, 2012, June 4, 2012, July 3, 2012, and August 2, 2012. (Exhibits 4-7)
5. On December 14, 2012, the agency sent Petitioner a notice that her tax refunds could be intercepted to satisfy the \$1178.00 debt. (Exhibit 3)
6. Petitioner filed a hearing request for fair hearing that was received by the Division of Hearings and Appeals on March 26, 2013. (Exhibit 1)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was December 14, 2012. As such, Petitioner needed to file her appeal by January 14, 2013. Her appeal was not filed until March 26, 2013. As such, her appeal is untimely, with regard to the issue of the tax intercept, and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she wished to appeal because she disagreed with the agency's assertion that she was overissued Foodshare benefits in the amount \$1,178.00. However, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, because there was a prior right to appeal the determination. *See* Wis. Stat., §49.85(4)(b) In this case, Petitioner did, in fact, exercise her right to appeal the determination that she was over-issued FoodShare benefits, and she lost that appeal.

If Petitioner wanted to contest ALJ Fleming's decision, she had 20 days from the date of the decision to file a rehearing request or 30 days to file an appeal to the circuit court. Petitioner asserted that she did nothing after ALJ Fleming issued his decision, because she misunderstood what the administrative law judge meant when he wrote, "the petition is dismissed". However, directly above the order, under the heading "Conclusions of Law", the ALJ wrote, "...Petitioner's FoodShare household was overissued FoodShare in the amount of \$1178.00 for the period from June 1, 2011 through December 31, 2011." That should have made it clear to Petitioner that she lost her fair hearing concerning the determination that she was over-issued FoodShare benefits.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal concerning the tax intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

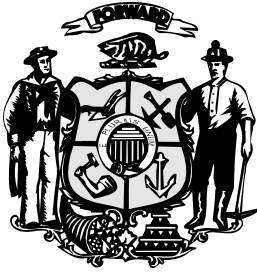
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of April, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 30, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability